

The Lords did assoilyie from that reason : because, albeit there had been no backbond, the assignation made by the liferenter, and transferred by the defender to the pursuer, bearing only in satisfaction of 400 merks, was *per se* sufficient, without a back-bond, to qualify Scott's right ; so that he ought to have looked upon it as that, upon satisfaction of 400 merks, by intromission or otherwise, it might be extinguished, whether there had been a back-bond granted or not. The second reason of the pursuit was,—That Scott was only obliged to refund the 470 merks at the first term after distress ; and therefore ought to refund to him his three years' possession, which he was forced to pay to the liferenter ; especially, he having advanced a greater sum than that which was paid to the liferenter, or was contained in Boyes's right.

The Lords did likewise assoilyie, notwithstanding of that ground ; in respect that Boyes had expressly transferred such a right only, as he himself had from Smith, which was only taxative, and not absolute : And found, That Scott being secured for repayment in case of distress, that the warrandice could not be interpreted to extend as to the preceding years of his possession, it being against reason and the meaning of parties that he might possess the whole years that the liferenter lived, and yet repeat the sums of money paid by him. But they found that Scott's possession, for the space of three years, should diminish yearly so much of the principal sum ; and for the superplus, they did decern the defender to refund the same, with the ordinary annualrents.

Page 134.

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1670. July 20. The LAIRD OF BLACKBARONY *against* JOHN BORROWMAN.

IN a reduction of the disposition of the lands of Nether Stewartoun, made to Borrowman, by Burnet of Carlops, whose author was Burnet of Cringlety, at the instance of the Laird of Blackbarony, who had right to an inhibition from Dennistoun, a creditor of Cringlety ; whereupon he craved the foresaid right to be reduced *ex capite inhibitionis* :

It was ANSWERED for the defender, That his disposition was in obedience of a decreet arbitral, following upon a submission prior to the inhibition ; at least to the publication thereof at the market cross.

It was REPLIED, That the submission being voluntary, and the inhibition executed personally against Cringlety, prior thereto ; and being executed publicly before the decreet-arbitral, which was the cause of the disposition, it was a just ground whereupon to reduce the right.

The Lords did ordain the defender to instruct the cause of the submission betwixt Cringlety and Carlops, that they might know if it depended upon any real right of trust, whereby Cringlety was obliged to denude himself of the right of these lands in favours of Carlops ; *quo casu* they declared that they would assoilyie from the reason of reduction : But if the submission was not in contemplation of any such right, but was merely personal and arbitrary, they would sustain this pursuit.

Page 135.